



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

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MRA-68/57723

**PRELIMINARY RECITALS**

Pursuant to a petition filed April 16, 2003, under Wis. Stat. § 49.455(8)(c) (1999-00) and Wis. Admin. Code § HFS 103.075(8)(c) (February 2002), to establish that petitioner's wife needs income above the level provided by the Medical Assistance (MA) program's Minimum Monthly Maintenance Needs Allowance (MMMNA), a fair hearing was held on May 22, 2003 in Waupaca, Wisconsin. At petitioner's request the record was held open until June 5, 2003.

The issue for determination is whether it has been established that petitioner's wife needs income above the level provided by the MMMNA.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:  
(petitioner)

Represented by:  
(petitioner's wife)

Division of Health Care Financing (DHCF)  
Department of Health & Family Services (DHFS)  
State of Wisconsin  
Room 250  
1 West Wilson Street  
P.O. Box 309  
Madison, Wisconsin 53701-0309  
BY: Carla Hales, ES Lead Worker  
Jane Voelker, ESS  
Waupaca County Department of Health and Human Services  
811 Harding Street  
Waupaca, Wisconsin 54981-2087

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx; CARES # xxxxxxxxxxx; DOB November 15, 1930) is a resident of Waupaca County.
2. Petitioner claims monthly expenses for his wife of \$4,754.60 (plus a one time expense of \$211.50 for a chiropractor and an "as needed" of \$80.00 floor cleaning/maintenance) and is requesting that her MMMNA be increased to that amount. Exhibits #1, #2A, #2B, #3A, #3B, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24 & #25.
3. The following monthly expenses are among those claimed by petitioner for his wife:
  - (A) \$7.33 -- car washing;
  - (B) \$15.70 -- dental for both petitioner and petitioner's wife;
  - (C) \$55.56 -- gifts;
  - (D) \$20.83 -- haircut/perm;
  - (E) \$12.50 -- cosmetics;
  - (F) \$12.35 -- publications;
  - (G) \$50.00 -- St. James;
  - (H) \$8.33 -- MRM (charity);
  - (I) \$8.33 -- Sal. Army;
  - (J) \$51.68 -- cable television;
  - (K) \$10.00 -- JUNO (extra telephone service);
  - (L) \$58.70 -- medicine for petitioner;
  - (M) \$64.73 -- GEHA insurance for petitioner;
  - (N) \$2,435.39 -- nursing home (King Veteran's Home) patient liability amount for petitioner;
  - (O) \$8.37 -- life insurance on petitioner's life;
  - (P) \$12.42 -- life insurance on the life of petitioner's wife (sons are beneficiaries); and,
  - (Q) \$45.29 -- life insurance on the life of petitioner's wife (sons are beneficiaries).

TOTAL OF THE ABOVE 17 ITEMS: \$2,877.51.

Exhibits #1, #15, #17, #18, #19, #20, #21 & #22.

4. In petitioner's case the MMMNA, provided for by law without a fair hearing or court order, is \$2,164.85.

**DISCUSSION**

Petitioner is a nursing home resident and is receiving MA. Petitioner's wife lives in the community.

When an MA recipient is in a nursing home all of that recipient's income, with certain limited exceptions not relevant here, must be used to pay nursing home costs. MA pays any nursing home costs which exceed the recipient's income.

Many MA recipients who are nursing home residents are (like petitioner) married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to keep up to a certain maximum amount of income per month. This is known as the "Minimum Monthly Maintenance Needs Allowance" (MMMNA). The MMMNA provided for by law without a fair hearing is the lessor of \$2,266.50 or \$2020.00 plus excess shelter costs. Wis. Stat. § 49.455(4)(c) (1999-00), MA Handbook, Appendix 23.6.0.; See also, Wis. Admin. Code § HFS 103.075(6)(b) (February 2002). In petitioner's case the MMMNA, provided for by law without a fair hearing or court order, is \$2,164.85.

The MMMNA can be increased if either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the MMMNA. Wis. Stat. § 49.455(8)(c) (1999-00); Wis. Admin. Code § HFS 103.075(8)(c) (February 2002), MA Handbook, Appendix 23.6.0.

The phrase "exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code § HFS 103.075(8)(c) (February 2002); MA Handbook, Appendix 23.6.0.

Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the community spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. A product or service is not a necessary and basic maintenance need simply because the community spouse purchased it on a routine basis prior to the recipient going into a nursing home.

The following monthly expenses claimed by petitioner for his wife cannot be allowed as necessary and basic maintenance needs for the reasons indicated:

- (A) \$7.33 -- car washing: not a necessary or basic maintenance need;
- (B) \$15.70 -- dental for both petitioner and petitioner's wife: only the amount for petitioner's wife (about \$7.85) can be allowed, the amount for petitioner is not an expense for the benefit of petitioner's wife;
- (C) \$55.56 -- gifts: not a necessary or basic maintenance need;
- (D) \$20.83 -- haircut/perm: not a necessary or basic maintenance need;
- (E) \$12.50 -- cosmetics: not a necessary or basic maintenance need;
- (F) \$12.35 -- publications: not a necessary or basic maintenance need;
- (G) \$50.00 -- St. James: not a necessary or basic maintenance need;
- (H) \$8.33 -- MRM (charity): not a necessary or basic maintenance need;

- (I) \$8.33 -- Sal. Army: not a necessary or basic maintenance need;
- (J) \$51.68 -- cable television: not a necessary or basic maintenance need;
- (K) \$10.00 -- JUNO (extra telephone service): not a necessary or basic maintenance need;
- (L) \$58.70 -- medicine for petitioner: not an expense for the benefit of petitioner's wife;
- (M) \$64.73 -- GEHA insurance for petitioner: not an expense for the benefit of petitioner's wife;
- (N) \$2,435.39 -- nursing home (King Veteran's Home) patient liability amount for petitioner: not an expense for the benefit of petitioner's wife (additionally, the patient liability amount is already taken in to account when figuring the MMMNA);
- (O) \$8.37 -- life insurance on petitioner's life: not a necessary or basic maintenance need;
- (P) \$12.42 -- life insurance on the life of petitioner's wife (sons are beneficiaries): not an expense for the benefit of petitioner's wife; and,
- (Q) \$45.29 -- life insurance on the life of petitioner's wife (sons are beneficiaries): not an expense for the benefit of petitioner's wife.

TOTAL OF THE ABOVE 17 DISALLOWED ITEMS: \$2,869.66 (\$2,877.51 less the \$7.85 allowed for dental for petitioner's wife).

In addition to the above, the claimed "as needed" expense of \$80.00 floor cleaning/maintenance cannot be allowed because it is not a necessary and basic maintenance need. The above list is not necessarily exhaustive. There may also be other expenses claimed by petitioner for his wife that are not allowable.

Petitioner claims monthly expenses for his wife of \$4,754.60. This amount minus the above monthly expenses that are not allowable is \$1,884.94 (\$4,754.60 minus \$2,869.66). The amount of \$1,884.94 is less than the MMMNA provided for petitioner's wife by law without a fair hearing or court order (\$2,164.85). Thus, petitioner has failed to establish that his wife needs income above the level provided by the MMMNA.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, it has been not been established that petitioner's wife needs income above the level provided by the MMMNA.

**NOW, THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

## **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 9th day of  
July, 2003

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/sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals  
86/SPM